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**MULTIFAMILY/HEALTH CARE (MORTGAGE,
DEED OF TRUST,
OR OTHER DESIGNATION AS APPROPRIATE IN JURISDICTION)
ASSIGNMENT OF RENTS
AND SECURITY AGREEMENT**
(STATE)

HUD Project Number:
Project Name:

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**MULTIFAMILY/HEALTH CARE (MORTGAGE,
DEED OF TRUST,
OR OTHER DESIGNATION AS APPROPRIATE IN JURISDICTION)
ASSIGNMENT OF RENTS AND
SECURITY AGREEMENT**

THIS MULTIFAMILY/HEALTH CARE (MORTGAGE, DEED OF TRUST, OR OTHER DESIGNATION AS APPROPRIATE IN JURISDICTION) ASSIGNMENT OF RENTS AND SECURITY AGREEMENT (the "**Security Instrument**") is made as of this _____ day of _____, _____, [among][between]

_____,
a _____ organized and existing under the laws of _____,
_____, whose address
is _____,
_____, as grantor, trustor,
Borrower ("**Borrower**"), to _____, [as
trustee ("**Trustee**"), for the benefit of

_____,
a _____ organized and existing under the laws of _____,
_____, whose address is _____,
_____, as beneficiary or][and] Lender ("**Lender**"),
a _____ organized and existing under the laws of _____,
_____, whose address is _____,
_____.
_____.

[Borrower, in consideration of the Indebtedness and the trust created by this Security Instrument, irrevocably grants, conveys and assigns to Trustee and Trustee's successors and assigns, in trust, with power of sale, the Mortgaged Property, including the Land located in _____ County, State of _____ and described in Exhibit A attached to this Security Instrument, to have and to hold the Mortgaged Property unto Trustee and Trustee's successors and assigns. **USE ALTERNATIVE APPROPRIATE GRANTING CLAUSE IF A MORTGAGE TRANSACTION.**]

TO SECURE TO LENDER the repayment of the Indebtedness evidenced by Borrower's Note payable to Lender dated as of the date of this Security Instrument, and maturing on _____, _____, in the principal amount of \$_____, and all renewals, extensions and modifications of the Indebtedness, and the performance of the covenants and agreements of Borrower contained in this Security Instrument and the Note.

Borrower represents and warrants that Borrower is lawfully seized of the Mortgaged Property and has the right, power and authority to mortgage, grant, convey and assign the Mortgaged Property, and that the Mortgaged Property is unencumbered. Borrower covenants that Borrower will warrant and defend generally the title to the Mortgaged Property against all claims and demands, subject to any easements and restrictions listed in a schedule of exceptions to coverage in any title insurance policy issued to Lender contemporaneously with the execution and recordation of this Security Instrument and insuring Lender's interest in the Mortgaged Property.

Covenants. Borrower and Lender covenant and agree as follows:

1. DEFINITIONS. The following terms, when used in this Security Instrument (including when used in the above recitals), shall have the following meanings:

(a) **"Borrower"** means all persons or entities identified as "Borrower" in the first paragraph of this Security Instrument, together with any successors and assigns. Whenever the term "Borrower" is used herein, the same shall be deemed to include the Obligor of the debt secured by the Security Instrument and shall also be deemed to be the Mortgagor as defined by the National Housing Act, as amended, implementing regulations and Directives.

(b) **"Building Loan Agreement"** means HUD-approved form of the agreement between the Borrower and Lender setting forth the terms and conditions for a construction loan.

(c) **"Collateral Agreement"** means any separate agreement between Borrower and Lender for the purpose of establishing replacement reserves for the Mortgaged Property, establishing a fund to assure the completion of repairs or Improvements specified in that agreement, or any other agreement or agreements between Borrower and Lender which provide for the establishment of any other fund, reserve or account including but not limited to those reserves and escrows required by HUD in connection with construction activity, if any, and those reserves and escrows required by HUD in connection with Health Care Facilities. These include but are not limited to the Sinking Fund Agreement, which provides for a depreciation reimbursement account to pay future principal payments of the Mortgage, where Medicaid or third-party reimbursement is on a depreciation plus interest basis; the Depreciation Reserve Fund Agreement which provides for an escrow or trust account with an approved custodian or trustee established for replacing equipment and forfunding of depreciation in accordance with a schedule approved by HUD, and the Mortgage Reserve Fund, which provides for an escrow or trust account with an approved custodian or trustee established for replacing equipment or protecting the Mortgaged Property or HUD.

(d) **"Event of Default"** means the occurrence of any event listed in Section 23 or Section 24.

(e) **"Fixtures"** means all property which is so attached to the Land or the Improvements as to constitute a fixture under applicable law, whether acquired now or in

the future, including: machinery, equipment (including medical equipment and systems), engines, boilers, incinerators, installed building materials; systems and equipment for the purpose of supplying or distributing heating, cooling, electricity, gas, water, air, or light; antennas, cable, wiring and conduits used in connection with radio, television, computers, medical systems, security, fire prevention, or fire detection or otherwise used to carry electronic signals; telephone systems and equipment; elevators and related machinery and equipment; fire detection, prevention and extinguishing systems and apparatus; security and access control systems and apparatus; plumbing systems; water heaters, ranges, stoves, microwave ovens, refrigerators, dishwashers, garbage disposals, washers, dryers and other appliances; light fixtures, awnings, storm windows and storm doors; pictures, screens, blinds, shades, curtains and curtain rods; mirrors; cabinets, paneling, rugs and floor and wall coverings; fences, trees and plants; swimming pools; playground and exercise equipment and classroom furnishings and equipment.

(f) **"Governmental Authority"** means any board, commission, department or body of any municipal, county, state or federal governmental unit, or any subdivision of any of them, that has or acquires jurisdiction over the Mortgaged Property, including the use, operation or improvement of the Mortgaged Property.

(g) **"Health Care Facilities"** means, but is not limited to, public or private nonprofit and proprietary hospitals, including major movable equipment, group practice medical facilities, skilled nursing home facilities, intermediate care facilities, board and care homes and assisted living facilities, and supplemental loans to finance Improvements, additions and equipment to these Health Care Facilities as authorized under the National Housing Act or other applicable federal law.

(h) **"HUD"** means the United States Department of Housing and Urban Development acting by and through the Secretary in the capacity as insurer or holder of the loan secured hereby under the authority of the National Housing Act, as amended, the Department of Housing and Urban Development Act, as amended, or any other federal law or regulation pertaining to the loan (as evidenced by the Note) or the Mortgaged Property.

(i) **"Impositions"** and **"Imposition Deposits"** are defined in Section 8(a).

(j) **"Improvements"** means the buildings, structures, and alterations now constructed or at any time in the future constructed or placed upon the Land, including any future replacements and additions.

(k) **"Indebtedness"** means the principal of, interest on, and all other amounts due at any time under the Note or this Security Instrument, including prepayment premiums, late charges, default interest, and advances as provided in Section 14 to protect the security of this Security Instrument.

(l) **"Land"** means the estate in realty described in Exhibit A.

HUD MULTIFAMILY/HEALTH CARE FACILITY SECURITY INSTRUMENT - HUD-94000M (Rev. Oct. 2003)

(m) **"Leases"** means all present and future leases, subleases, licenses, concessions or grants or other possessory interests now or hereafter in force, whether oral or written, covering or affecting the Mortgaged Property, or any portion of the Mortgaged Property (including proprietary leases, non-residential leases or occupancy agreements if Borrower is a cooperative housing corporation), and all modifications, extensions or renewals. For Health Care Facilities, Lease also means, but is not limited to, the agreements between the Borrower/lessor and the operator/lessee of the facility by which the lessee agrees to operate and manage the facility, and/or portion thereof, and any agreement between the Health Care Facility and a lessee/provider of medical and related services proper and necessary for the care and treatment of persons who are acutely ill who require medical or health care customarily, or most effectively provided for by Health Care Facilities. (As used herein, operator/lessee, lessee and lessee/provider shall cumulatively be referred to as "Lessee.")

(n) **"Lender"** means the entity identified as "Lender" in the first paragraph of this Security Instrument, or any subsequent holder of the Note, and whenever the term "Lender" is used herein, the same shall be deemed to include the Obligor, or the Trustee(s) and the Beneficiary of the Security Instrument and shall also be deemed to be the Mortgagee as defined by the National Housing Act, as amended, implementing regulations and Directives.

(o) **"Loan Documents"** means the Note, this Security Instrument, and the Regulatory Agreement, as such documents may be amended from time to time.

(p) **"Loan Servicer"** means the entity that from time to time is designated by Lender to collect payments and deposits and receive Notice under the Note or this Security Instrument, and otherwise to service the loan evidenced by the Note for the benefit of Lender. Unless Borrower receives Notice to the contrary, the Loan Servicer is the entity identified as "Lender" in the first paragraph of this Security Instrument.

(q) **"Mortgaged Property"** means all of Borrower's present and future right, title and interest in and to all of the following:

- (1) the Land;
- (2) the Improvements;
- (3) the Fixtures;
- (4) the Personalty;
- (5) all current and future rights, including air rights, development rights, zoning rights and other similar rights or interests, easements, tenements, rights-of-way, strips and gores of land, streets, alleys, roads, sewer rights, waters, watercourses, and appurtenances

related to or benefiting the Land or the Improvements, or both, and all rights-of-way, streets, alleys and roads which may have been or may in the future be vacated;

- (6) all proceeds paid or to be paid by any insurer of the Land, the Improvements, the Fixtures, the Personalty or any other part of the Mortgaged Property, whether or not Borrower obtained the insurance pursuant to Lender's requirement;
- (7) all awards, payments and other compensation made or to be made by any municipal, state or federal authority with respect to the Land, the Improvements, the Fixtures, the Personalty or any other part of the Mortgaged Property, including any awards or settlements resulting from condemnation proceedings or the total or partial taking of the Land, the Improvements, the Fixtures, the Personalty or any other part of the Mortgaged Property under the power of eminent domain or otherwise and including any conveyance in lieu thereof;
- (8) all contracts, options and other agreements for the sale of the Land, the Improvements, the Fixtures, the Personalty or any other part of the Mortgaged Property entered into by Borrower now or in the future, including cash or securities deposited to secure performance by parties of their obligations;
- (9) all proceeds from the conversion, voluntary or involuntary, of any of the above into cash or liquidated claims, and the right to collect such proceeds;
- (10) all Rents and Leases;
- (11) all earnings, royalties, instruments, accounts, accounts receivable, supporting obligations, issues and profits from the Land, the Improvements or any other part of the Mortgaged Property, and all undisbursed proceeds of the loan secured by this Security Instrument and, if Borrower is a cooperative housing corporation, maintenance charges or assessments payable by shareholders or residents;
- (12) all Imposition Deposits;
- (13) all refunds or rebates of Impositions by any municipal, state or federal authority or insurance company (other than refunds applicable to periods before the real property tax year in which this Security Instrument is dated);

- (14) all tenant security deposits which have not been forfeited by any tenant under any Lease;
- (15) all names under or by which any of the above Mortgaged Property may be operated or known, and all trademarks, trade names, and goodwill relating to any of the Mortgaged Property; and
- (16) for Health Care Facilities, Mortgaged Property also includes, but is not limited to, any and all licenses, Bed Authority, and/or Certificates of Need required to operate the facility and receive the benefits and reimbursements under a provider agreement with Medicaid, Medicare, any state or local programs, health care insurers or other assistance providers relied upon by HUD to insure the Security Instrument, to the extent allowed by law. Mortgaged Property also includes all receipts, revenues, income and other moneys received by or on behalf of the Health Care Facility, including all accounts receivable, all contributions, donations, gifts, grants, bequests, all revenues derived from the operation of the Health Care Facility and all rights to receive the same, whether in the form of accounts receivable, contract rights, chattel paper, instruments or other rights whether now owned or held or later acquired by the Health Care Facility.

(r) **"Note"** means the Multifamily/Health Care Facility Note described on page 1 of this Security Instrument, including all schedules, riders, allonges and addenda, as such Multifamily/Health Care Facility Note may be amended from time to time.

(s) **"Personalty"** means all furniture, furnishings, equipment, machinery, building materials, appliances, goods, supplies, tools, books, records (whether in written or electronic form), computer equipment (hardware and software) and other tangible or electronically stored personal property (other than Fixtures) which are owned or leased by the Borrower or the Lessee now or in the future in connection with the ownership, management or operation of the Land or the Improvements or are located on the Land or in the Improvements, and any operating agreements relating to the Land or the Improvements, and any surveys, plans and specifications and contracts for architectural, engineering and construction services relating to the Land or the Improvements, choses in action and all other intangible property and rights relating to the operation of, or used in connection with, the Land or the Improvements, including all governmental permits relating to any activities on the Land. For Health Care Facilities, Personalty also includes all tangible and intangible personal property used for health care (such as major movable equipment and systems), accounts, licenses, bed authorities, certificates of need required to operate the project and to receive benefits and reimbursements under provider agreements with Medicaid, Medicare, state and local programs, payments from health care insurers and any other assistance providers ("Receivables"); all permits, instruments, Rents, lease and contract rights, equipment leases relating to the use, operation, maintenance, repair and improvement of the Health Care Facility.

Generally, intangibles shall also include all cash and cash escrow funds, such as but not limited to: sinking fund accounts, depreciation reserve fund accounts, mortgage reserve fund accounts, reserve for replacement accounts, bank accounts, residual receipt accounts, all contributions, donations, gifts, grants, bequests and endowment funds by donors and all other revenues and accounts receivable from what ever source paid or payable.

(t) **"Principals"** are the following legal and natural persons having ownership interests in the Borrower: natural persons who are sole owners, joint venturers, joint tenants, tenants by the entirety, trustees or beneficiaries of trusts, and all general partners; in the case of limited partnerships, limited partners having a twenty-five (25) percent or more interest in the partnership; in the case of public or private corporations or governmental entities, the president, vice president, secretary, treasurer, and all other executive officers who are directly responsible to the board of directors, or any equivalent governing body, as well as all directors and each stockholder having a 10 percent or more interest in the corporation; in the case of a Limited Liability Company (LLC) or a Limited Liability Partnership (LLP), all managing members or partners, all managers, and all members or partners with a 10 percent or greater governance interest or a twenty-five (25) percent or greater financial interest.

(u) **"Property Jurisdiction"** is defined in Section 32(a).

(v) **"Regulatory Agreement"** means the agreement between the Borrower or certain Lessees of the Borrower and HUD establishing the Borrower's or Lessees' obligations in the operation of the Mortgaged Property and the rights and powers of HUD.

(w) **"Rents"** means all rents (whether from residential or non-residential space), revenues, issues, profits, (including carrying charges, maintenance fees, and other cooperative revenues) and other income of the Land or the Improvements, including all revenues, gross receipts and receivables in connection with medical services and care, and all pledges, gifts, grants, bequests, contributions and endowments, parking fees, laundry and vending machine income and fees and charges for food, health care and other services provided at the Mortgaged Property, whether now due, past due, or to become due, and deposits forfeited by tenants.

(x) **"Taxes"** means all taxes, assessments, vault rentals and other charges, if any, general, special or otherwise, including all assessments for schools, public betterments and general or local improvements, which are levied, assessed or imposed by any public authority or quasi-public authority, and which, if not paid, could become a lien on the Land or the Improvements.

(y) **"Waste"** means a failure to keep the Mortgaged Property in decent, safe and sanitary condition and in good repair. Waste also means the failure to meet certain financial obligations regarding the payment of Taxes and the relinquishment of the possession of Rents. During any period in which HUD insures this loan or holds a

security interest on the Mortgaged Property, Waste is committed when, without Lender's and HUD's express written consent, Borrower:

- (1) physically changes the Mortgaged Property, whether negligently or intentionally, in a manner that reduces its value;
- (2) fails to maintain and repair the Mortgaged Property;
- (3) fails to pay before delinquency any Taxes secured by a lien having priority over the Security Instrument;
- (4) fails to comply with covenants in the Note, this Security Instrument or the Regulatory Agreement respecting physical care, maintenance, construction, demolition, or insurance against casualty of the Mortgaged Property or fails to comply with HUD requirements regarding physical condition standards for HUD housing, including those codified at 24 C.F.R. § 5.703 and any subsequent amendments thereto; or
- (5) retains possession of Rents to which the Lender or its assigns have the right of possession under the terms of the Loan Documents.

2. UNIFORM COMMERCIAL CODE SECURITY AGREEMENT. This Security Instrument is also a security agreement under the Uniform Commercial Code for any of the Mortgaged Property which, under applicable law, may be subject to a security interest under the Uniform Commercial Code, whether acquired now or in the future, and all products and cash proceeds and non-cash proceeds thereof (collectively, "**UCC Collateral**"), and Borrower hereby grants to Lender a security interest in the UCC Collateral. Borrower shall execute and deliver to Lender, upon Lender's request, financing statements, continuation statements and amendments, in such form as Lender may require to perfect or continue the perfection of this security interest. Borrower shall pay all filing costs and all costs and expenses of any record searches for financing statements that Lender may require. Without the prior written consent of Lender and HUD, Borrower shall not create or permit to exist any other lien or security interest in any of the UCC Collateral. If an Event of Default has occurred and is continuing, Lender shall have the remedies of a secured party under the Uniform Commercial Code, in addition to all remedies provided by this Security Instrument or existing under applicable law. In exercising any remedies, Lender may exercise its remedies against the UCC Collateral separately or together, and in any order, without in any way affecting the availability of Lender's other remedies. This Security Instrument constitutes a financing statement with respect to any part of the Mortgaged Property which is or may become a Fixture.

3. ASSIGNMENT OF RENTS; APPOINTMENT OF RECEIVER; LENDER IN POSSESSION.

(a) As part of the consideration for the Indebtedness, Borrower absolutely and unconditionally assigns and transfers to Lender all Rents. It is the intention of Borrower to establish a present, absolute and irrevocable transfer and assignment to Lender of all Rents and to authorize and empower Lender to collect and receive all Rents without the necessity of further action on the part of Borrower. Promptly upon request by Lender, Borrower agrees to execute and deliver such further assignments as Lender may from time to time require. Borrower and Lender intend this assignment of Rents to be immediately effective and to constitute an absolute present assignment and not an assignment for additional security only. For purposes of giving effect to this absolute assignment of Rents, and for no other purpose, Rents shall not be deemed to be a part of the "Mortgaged Property" as that term is defined in Section 1(q). However, if this present, absolute and unconditional assignment of Rents is not enforceable by its terms under the laws of the Property Jurisdiction, then the Rents shall be included as a part of the Mortgaged Property and it is the intention of the Borrower that in this circumstance this Security Instrument create and perfect a lien on Rents in favor of Lender, which lien shall be effective as of the date of this Security Instrument.

(b) After the occurrence of an Event of Default, Borrower authorizes Lender to collect, sue for and compromise Rents and directs each tenant and/or non-residential Lessee of the Mortgaged Property to pay all Rents to, or as directed by, Lender. However, until the occurrence of an Event of Default, Lender hereby grants to Borrower a revocable license to collect and receive all Rents for use in accordance with the provisions of the Regulatory Agreement, to hold all Rents in trust for the benefit of Lender and to apply all Rents to pay the installments of interest and principal then due and payable under the Note and the other amounts then due and payable under this Security Instrument, including Imposition Deposits, and to pay the current costs and expenses of managing, operating and maintaining the Mortgaged Property, including utilities, Taxes and insurance premiums (to the extent not included in Imposition Deposits), tenant improvements and other capital expenditures. So long as no Event of Default has occurred and is continuing, the Rents remaining after application pursuant to the preceding sentence may be retained by Borrower free and clear of, and released from, Lender's rights with respect to Rents under this Security Instrument, unless otherwise restricted by the terms of the Regulatory Agreement. From and after the occurrence of an Event of Default, and without the necessity of Lender entering upon and taking and maintaining control of the Mortgaged Property directly, or by a receiver, Borrower's license to collect Rents shall automatically terminate and Lender shall without Notice be entitled to all Rents as they become due and payable, including Rents then due and unpaid. Borrower shall pay to Lender upon demand all Rents to which Lender is entitled. At any time on or after the date of Lender's demand for Rents, Lender may give, and Borrower hereby irrevocably authorizes Lender to give, Notice to all tenants of the Mortgaged Property instructing them to pay all Rents to Lender. No tenant shall be obligated to inquire further as to the occurrence or continuance of an Event of Default, and no tenant shall be obligated to pay to Borrower any amounts which are actually paid to Lender in response to such a Notice. Any such Notice by Lender shall be delivered to each tenant personally, by mail or by delivering such demand to each rental unit. A copy of such Notice shall be provided promptly to HUD by Lender.

Borrower shall not interfere with and shall cooperate with Lender's collection of such Rents.

(c) Borrower represents and warrants to Lender that Borrower has not executed any prior assignment of Rents (other than an assignment of Rents to HUD pursuant to the Regulatory Agreement and an assignment of Rents securing indebtedness that will be paid off and discharged with the proceeds of the loan evidenced by the Note or assignments of Rents in connection with commercial or health care transactions as approved by HUD), that Borrower has not performed, and Borrower covenants and agrees that it will not perform, any acts and has not executed, and shall not execute, any instrument which would prevent Lender from exercising its rights under Section 3, and that at the time of execution of this Security Instrument there has been no anticipation or prepayment of any Rents for more than two months prior to the due dates of such Rents. Borrower shall not collect or accept payment of any Rents more than two months prior to the due dates of such Rents (other than collections in connection with commercial or health care transactions as approved by HUD).

(d) If an Event of Default has occurred and is continuing, Lender may, regardless of the adequacy of Lender's security or the solvency of Borrower and even in the absence of Waste (but only with the prior written approval of HUD in the event of non-monetary defaults), enter upon and take and maintain full control of the Mortgaged Property in order to perform all acts that Lender in its discretion determines to be necessary or desirable for the operation and maintenance of the Mortgaged Property, including the execution, cancellation or modification of Leases, the collection of all Rents, the making of repairs to the Mortgaged Property and the execution or termination of contracts providing for the management, operation or maintenance of the Mortgaged Property, for the purposes of enforcing the assignment of Rents pursuant to Section 3(a), protecting the Mortgaged Property or the security of this Security Instrument, or for such other purposes as Lender in its discretion may deem necessary or desirable. Alternatively, if an Event of Default has occurred and is continuing, regardless of the adequacy of Lender's security, without regard to Borrower's solvency and without the necessity of giving prior Notice (oral or written) to Borrower, Lender may apply to any court having jurisdiction for the appointment of a receiver for the Mortgaged Property to take any or all of the actions set forth in the preceding sentence. A copy of such request shall be provided promptly to HUD by Lender. If Lender elects to seek the appointment of a receiver for the Mortgaged Property at any time after an Event of Default has occurred and is continuing, Borrower, by its execution of this Security Instrument, expressly consents to the appointment of such receiver, including the appointment of a receiver *ex parte* if permitted by applicable law. Lender or the receiver, as the case may be, shall be entitled to receive a reasonable fee for managing the Mortgaged Property. Immediately upon appointment of a receiver or immediately upon the Lender's entering upon and taking possession and control of the Mortgaged Property, Borrower shall surrender possession of the Mortgaged Property to Lender or the receiver, as the case may be, and shall deliver to Lender or the receiver, as the case may be, all documents, records (including records on electronic or magnetic media), accounts, surveys, plans, and specifications relating to the Mortgaged Property and all

security deposits and prepaid Rents. In the event Lender takes possession and control of the Mortgaged Property, Lender may exclude Borrower and its representatives from the Mortgaged Property. Borrower acknowledges and agrees that the exercise by Lender of any of the rights conferred under Section 3 shall not be construed to make Lender a Lender-in-possession of the Mortgaged Property so long as Lender, or authorized agent of Lender, has not entered into actual possession of the Land and Improvements.

(e) If Lender enters the Mortgaged Property, Lender shall be liable to account only to Borrower and only for those Rents actually received. Lender shall not be liable to Borrower, anyone claiming under or through Borrower or anyone having an interest in the Mortgaged Property, by reason of any act or omission of Lender under Section 3, and Borrower hereby releases and discharges Lender from any such liability to the fullest extent permitted by law. However, nothing contained in this Security Instrument shall in any fashion discharge Lender from any obligations to HUD or any other party under the Regulatory Agreement, the Contract of Insurance (as set forth in applicable HUD regulations), or the HUD statutes and regulations.

(f) If the Rents are not sufficient to meet the costs of taking control of and managing the Mortgaged Property and collecting the Rents, any funds expended by Lender for such purposes shall become an additional part of the principal of the Indebtedness as provided in Section 14.

(g) Any entering upon and taking of control of the Mortgaged Property by Lender or the receiver, as the case may be, and any application of Rents as provided in this Security Instrument shall not cure or waive any Event of Default or invalidate any other right or remedy of Lender and/or HUD as its interests appear under applicable law or provided for in this Security Instrument.

4. ASSIGNMENT OF LEASES; LEASES AFFECTING THE MORTGAGED PROPERTY.

(a) As part of the consideration for the Indebtedness, Borrower absolutely and unconditionally assigns and transfers to Lender all of Borrower's right, title and interest in, to and under the Leases, including Borrower's right, power and authority to modify the terms of any such Lease, or extend or terminate any such Lease. It is the intention of Borrower to establish a present, absolute and irrevocable transfer and assignment to Lender of all of Borrower's right, title and interest in, to and under the Leases. Borrower and Lender intend this assignment of the Leases to be immediately effective and to constitute an absolute present assignment and not an assignment for additional security only. For purposes of giving effect to this absolute assignment of the Leases, and for no other purpose, the Leases shall not be deemed to be a part of the "Mortgaged Property" as that term is defined in Section 1(q). However, if this present, absolute and unconditional assignment of the Leases is not enforceable by its terms under the laws of the Property Jurisdiction, then the Leases shall be included as a part of the Mortgaged Property and it is the intention of Borrower that in this circumstance this Security

Instrument create and perfect a lien on the Leases in favor of Lender, which lien shall be effective as of the date of this Security Instrument.

(b) Until Lender gives Notice to Borrower of Lender's exercise of its rights under Section 4, Borrower shall have all rights, power and authority granted to Borrower under any Lease (except as otherwise limited by this Section or any other provision of this Security Instrument), including the right, power and authority to modify the terms of any Lease or extend or terminate any Lease. Upon the occurrence of an Event of Default, the permission given to Borrower pursuant to the preceding sentence to exercise all rights, power and authority under Leases shall automatically terminate. Borrower shall comply with and observe Borrower's obligations under all Leases, including Borrower's obligations pertaining to the maintenance and disposition of tenant security deposits.

(c) Borrower acknowledges and agrees that the exercise by Lender, either directly or by a receiver, of any of the rights conferred under Section 4 shall not be construed to make Lender a Lender-in-possession of the Mortgaged Property so long as Lender, or an authorized agent of Lender, has not entered into actual possession of the Land and the Improvements. The acceptance by Lender of the assignment of the Leases pursuant to Section 4(a) shall not at any time or in any event obligate Lender to take any action under this Security Instrument or to expend any money or to incur any expenses. Lender shall not be liable in any way for any injury or damage to person or property sustained by any person or persons, firm or corporation in or about the Mortgaged Property unless Lender is a Lender-in-possession. Prior to Lender's actual entry into and taking possession of the Mortgaged Property, Lender shall not (1) be obligated to perform any of the terms, covenants and conditions contained in any Lease (or otherwise have any obligation with respect to any Lease); (2) be obligated to appear in or defend any action or proceeding relating to the Lease or the Mortgaged Property; or (3) be responsible for the operation, control, care, management or repair of the Mortgaged Property or any portion of the Mortgaged Property. The execution of this Security Instrument by Borrower shall constitute conclusive evidence that all responsibility for the operation, control, care, management and repair of the Mortgaged Property is and shall be that of Borrower, prior to such actual entry and taking of possession.

(d) Upon delivery of Notice by Lender to Borrower of Lender's exercise of Lender's rights under Section 4 at any time after the occurrence of an Event of Default, and without the necessity of Lender entering upon and taking and maintaining control of the Mortgaged Property directly, by a receiver, or by any other manner or proceeding permitted by the laws of the Property Jurisdiction, Lender immediately shall have all rights, powers and authority granted to Borrower under any Lease, including the right, power and authority to modify the terms of any such Lease, or extend or terminate any such Lease.

(e) Borrower shall, promptly upon Lender's request, deliver to Lender an executed copy of each residential Lease then in effect. All Leases for residential

dwelling units shall be acceptable to the Lender and shall comply with HUD requirements.

(f) Borrower shall not lease any portion of the Mortgaged Property for non-residential use except with the prior written consent of Lender and HUD, and Lender's and HUD's prior written approval of the Lease agreement. Borrower shall not modify the terms of, or extend or terminate, any Lease for non-residential use (including any Lease in existence on the date of this Security Instrument) without the prior written consent of Lender and HUD. Borrower shall, without request by Lender, deliver an executed copy of each non-residential Lease to Lender and HUD promptly after such Lease is signed. (1) All non-residential Leases, including renewals or extensions of existing Leases, shall specifically provide that (i) such Leases are subordinate to the lien of this Security Instrument; (ii) the tenant shall attorn to Lender and any purchaser at a foreclosure sale, such attornment to be self-executing and effective upon acquisition of title to the Mortgaged Property by any purchaser at a foreclosure sale or by Lender in any manner; (iii) the tenant agrees to execute such further evidences of attornment as Lender or any purchaser at a foreclosure sale may from time to time request; (iv) the Lease shall not be terminated by foreclosure or any other transfer of the Mortgaged Property; (v) after a foreclosure sale of the Mortgaged Property or after transfer of the Mortgaged Property to the Lender by a deed-in-lieu of foreclosure, Lender or any purchaser at such foreclosure sale may, at Lender's or such purchaser's option, accept or terminate such Lease; and (vi) the tenant shall, upon receipt after the occurrence of an Event of Default of a written request from Lender, pay all Rents payable under the Lease to Lender. (2) In addition to the foregoing requirements, any Lease of the Mortgaged Property for telecommunications uses shall contain: (i) a comprehensive listing of the equipment to be installed; (ii) a legal description of the portion of the Mortgaged Property to be utilized; (iii) a comprehensive listing of any proposed Improvements to the Mortgaged Property; (iv) a provision which conditions the Lease on the tenant obtaining all variances, permits, licenses or approvals required by applicable law; (v) a provision precluding the assignment or sublet of the leased space without the prior written approval of the Lender and HUD, to be granted or withheld by each in its sole discretion; (vi) an acknowledgment by the tenant that it has performed its own investigation of the property and has determined its suitability for use; (vii) a provision granting the Borrower, its successors or assigns, the right to relocate any equipment, wiring or cabling; and (viii) a provision which permits the Borrower, its successors or assigns, the right to terminate the Lease should it be shown that the equipment constitutes a danger to health or safety.

(g) Borrower shall not receive or accept Rent under any Lease (whether residential or non-residential) for more than two months in advance.

5. PAYMENT OF INDEBTEDNESS; PERFORMANCE UNDER LOAN DOCUMENTS; PREPAYMENT PREMIUM. Borrower shall pay the Indebtedness when due in accordance with the terms of the Note and this Security Instrument and shall perform, observe and comply with all other provisions of the Note and this Security Instrument. Borrower shall pay a prepayment premium in connection with certain

prepayments of the Indebtedness, including a payment made after Lender's exercise of any right of acceleration of the Indebtedness, as provided in the Note.

6. EXCULPATION. Borrower's personal liability for payment of the Indebtedness and for performance of the other obligations to be performed by it under this Security Instrument is limited in the manner, and to the extent, provided in the Note and attached Acknowledgment except as provided otherwise herein or limited or modified by the Regulatory Agreement and federal law.

7. DEPOSITS FOR TAXES, INSURANCE AND OTHER CHARGES.

(a) Borrower shall pay to and deposit with Lender, together with and in addition to the monthly payments of interest or of principal and interest payable under the terms of the Note secured hereby, on the first day of each month after the commencement of amortization under the Note, and continuing until the debt secured hereby is paid in full, the following sums:

- (1) an amount sufficient to provide Lender with funds to pay the next mortgage insurance premium if this Security Instrument and the Note secured hereby are insured or a monthly service charge, if they are held by HUD, as follows:

- (i) If and so long as the Note of even date is insured under the provisions of the National Housing Act, as amended, an amount sufficient to accumulate in the hands of Lender one month prior to its due date the annual mortgage insurance premium, in order to provide Lender with funds to pay such premium to HUD pursuant to the National Housing Act, as amended, and applicable Regulations thereunder, or;

- (ii) If and so long as the Note and this Security Instrument are held by HUD, a monthly service charge in an amount equal to one-twelfth of one-half ($1/12$ of $1/2$) percent of the average outstanding principal balance due on the Note computed for each successive year beginning with the first day of the month following the date of this Security Instrument, or the first day of the month following assignment, if the Note and this Security Instrument are assigned to HUD without taking into account delinquencies or prepayment;

- (2) a sum to the ground rents, if any, next due, plus the premiums that will next become due and payable on policies of fire and other property insurance covering the premises covered hereby, plus water rates, Taxes, municipal/government utility charges and special assessments next due on the premises covered hereby (all as estimated by Lender) less all sums already paid therefor divided by the number of months to the date when

such ground rents, premiums, water rates, Taxes, municipal/utility charges and special assessments will become delinquent, such sums to be held by Lender in trust to pay said ground rents, premiums, water rates, Taxes, and special assessments; and

- (3) all payments and deposits mentioned in the two preceding subsections of this Section and all payments to be made under the Note shall be added together and the aggregate amount thereof shall be paid each month in a single payment or deposit to be applied by Lender to the following items in the order set forth:

- (i) premium charges under the Contract of Insurance;
- (ii) ground rents, Taxes, special assessments, water rates, municipal/government utility charges, fire and other property insurance premiums;
- (iii) interest on the Note; and
- (iv) amortization of the principal of Note.

(b) Borrower shall pay to and deposit with Lender, at times specified and as required by HUD, all other escrows and deposits, including any reserve for replacements.

8. IMPOSITION DEPOSITS.

(a) In the event Borrower fails to pay any sums provided for in this Security Instrument, Lender, at its option, may pay the same. Any excess funds accumulated under Section 7(b) remaining after payment of the items therein mentioned, shall be credited to subsequent monthly payments of the same nature required thereunder; but if any such item shall exceed the estimate therefor, or if the Borrower shall fail to pay any other governmental or municipal charge, Borrower shall forthwith make good the deficiency or pay the charge before the same become delinquent or subject to interest or penalties and in default thereof Lender may pay the same. All sums paid by Lender and any sums which Lender may be required to advance to pay mortgage insurance premiums shall be added to the principal of the Note and shall bear interest from the date of payment at the rate specified in the Note and shall be due and payable on demand. In case of termination of the Contract of Insurance by prepayment of the Indebtedness in full, or otherwise (except as hereinafter provided) accumulations under Section 7(a) not required to meet payments due under the Contract of Insurance, shall be credited to Borrower. If the Mortgaged Property is sold under foreclosure or is otherwise acquired by Lender after Default, any remaining balance of the accumulations under Section 7(b) shall be credited to the principal under the Note as of the date of the commencement of foreclosure proceedings or as of the date the Mortgaged Property is otherwise acquired; and accumulations under (a) thereof shall be likewise credited

unless required to pay sums due HUD under the Contract of Insurance. The amounts deposited under Section 7 and Section 8 is collectively referred to in this Security Instrument as the "**Imposition Deposits**". The obligations of Borrower for which the Imposition Deposits are required are collectively referred to in this Security Instrument as "**Impositions**". The amount of the Imposition Deposits shall be sufficient to enable Lender to pay applicable Impositions before the last date upon which such payment may be made without any penalty or interest charge being added. Lender shall maintain records indicating how much of the monthly Imposition Deposits and how much of the aggregate Imposition Deposits held by Lender are held for the purpose of paying Taxes, insurance premiums and each other obligation of Borrower for which Imposition Deposits are required. Any waiver by Lender of the requirement that Borrower remit Imposition Deposits to Lender may be revoked by Lender, in Lender's discretion, at any time upon Notice to Borrower.

(b) Imposition Deposits shall be held in an institution (which may be Lender, if Lender is such an institution, and/or if required by HUD under the Regulatory Agreement with respect to all or any portion of said Imposition Deposits) whose deposits or accounts are insured or guaranteed by a federal agency and which meets all applicable HUD requirements. Lender shall not be obligated to open additional accounts or deposit Imposition Deposits in additional institutions when the amount of the Imposition Deposits exceeds the maximum amount of the federal deposit insurance or guaranty. Lender shall apply the Imposition Deposits to pay Impositions so long as no Event of Default has occurred and is continuing. Unless applicable law requires, Lender shall not be required to pay Borrower any interest, earnings or profits on the Imposition Deposits. Borrower hereby pledges and grants to Lender a security interest in the Imposition Deposits as additional security for all of Borrower's obligations under this Security Instrument and the Note. Any amounts deposited with Lender under Section 8 shall not be trust funds, nor shall they operate to reduce the Indebtedness.

(c) If Lender receives a bill or invoice for an Imposition, Lender shall pay the Imposition from the Imposition Deposits held by Lender. Lender shall have no obligation to pay any Imposition to the extent it exceeds Imposition Deposits then held by Lender. Lender may pay an Imposition according to any bill, statement or estimate from the appropriate public office or insurance company without inquiring into the accuracy of the bill, statement or estimate or into the validity of the Imposition.

(d) If at any time the amount of the Imposition Deposits held by Lender for payment of a specific Imposition exceeds the amount reasonably deemed necessary by Lender plus one-sixth of such estimate, the excess shall be credited against future installments of Imposition Deposits. If at any time the amount of the Imposition Deposits held by Lender for payment of a specific Imposition is less than the amount reasonably estimated by Lender to be necessary plus one-sixth of such estimate, Borrower shall pay to Lender the amount of the deficiency within 15 days after Notice from Lender.

9. COLLATERAL AGREEMENTS.

Borrower shall deposit with Lender such amounts as may be required by any Collateral Agreement and shall perform all other obligations of Borrower under each Collateral Agreement. Collateral Agreement deposits shall be held in an institution (which may be Lender, if Lender is such an institution) whose deposits or accounts are insured or guaranteed by a federal agency. Unless applicable law requires, Lender shall not be required to pay Borrower any interest, earnings or profits on the Imposition Deposits.

10. REGULATORY AGREEMENT DEFAULT. Borrower and HUD have executed a Regulatory Agreement which is being recorded simultaneously with this Security Instrument and is incorporated in and made a part of this Security Instrument. Upon the direction of HUD, following a declaration of default by HUD under the Regulatory Agreement, the Lender shall declare the entire Indebtedness to be due and payable.

11. APPLICATION OF PAYMENTS. If at any time Lender receives, from Borrower or otherwise, any amount applicable to the Indebtedness which is less than all amounts due and payable at such time, then Lender must apply that payment to amounts then due and payable in the precise manner and in the precise order set forth in Section 7(a). Neither Lender's acceptance of an amount which is less than all amounts then due and payable nor Lender's application of such payment in the manner authorized shall constitute or be deemed to constitute either a waiver of the unpaid amounts or an accord and satisfaction. Notwithstanding the application of any such amount to the Indebtedness, Borrower's obligations under this Security Instrument and the Note shall remain unchanged.

12. COMPLIANCE WITH LAWS. Borrower shall comply with all applicable: laws; ordinances; regulations; requirements of any Governmental Authority; lawful covenants and agreements recorded against the Mortgaged Property; the National Housing Act; the Regulatory Agreement; regulations and Directives of HUD; including but not limited to those of the foregoing pertaining to: health and safety; construction of Improvements on the Mortgaged Property; fair housing; civil rights; zoning and land use; leases; lead-based paint maintenance requirements of 24 CFR Part 35, subpart F; and maintenance and disposition of tenant security deposits; and, with respect to all of the foregoing, all subsequent amendments, revisions, promulgations or enactments. Borrower shall at all times maintain records sufficient to demonstrate compliance with the provisions of Section 12. Borrower shall take appropriate measures to prevent, and shall not engage in or knowingly permit, any illegal activities at the Mortgaged Property that could endanger tenants or visitors, result in damage to the Mortgaged Property, result in forfeiture of the Mortgaged Property, or otherwise materially impair the lien created by this Security Instrument or Lender's interest in the Mortgaged Property. Borrower represents and warrants to Lender that no portion of the Mortgaged Property has been or will be purchased with the proceeds of any illegal activity.

13. USE OF PROPERTY. Unless required by applicable law and approved by Lender and HUD, Borrower shall not (a) allow changes in the use for which all or any

part of the Mortgaged Property is being used at the time this Security Instrument was executed, (b) convert any individual dwelling units or common areas to commercial use, (c) initiate or acquiesce in a change in the zoning classification of the Mortgaged Property, (d) establish any condominium or cooperative regime with respect to the Mortgaged Property, (e) change any unit configurations or the number of units in the Mortgaged Property or (f) permit the Mortgaged Property to be used as transient housing or as a hotel in violation of Section 513 of the National Housing Act, as amended.

14. PROTECTION OF LENDER'S SECURITY.

(a) If Borrower fails to perform any of its obligations under this Security Instrument, Note or Regulatory Agreement, or if any action or proceeding is commenced which purports to affect the Mortgaged Property, Lender's security or Lender's rights under this Security Instrument, including eminent domain, insolvency, Waste, code enforcement, civil or criminal forfeiture, enforcement of Hazardous Materials Laws, fraudulent conveyance or reorganizations or proceedings involving a bankrupt or decedent, then Lender at Lender's option may make such appearances, disburse such sums and take such actions as Lender reasonably deems necessary to perform such obligations of Borrower and to protect Lender's interest, including (1) payment of fees and out-of-pocket expenses of attorneys (including fees for litigation at all levels), accountants, inspectors and consultants, (2) entry upon the Mortgaged Property to make repairs or secure the Mortgaged Property, (3) procurement of the insurance required by Section 21, and (4) payment of amounts which Borrower has failed to pay under Section 17 and Section 19.

(b) Any amounts disbursed by Lender under Section 14, or under any other provision of this Security Instrument that treats such disbursement as being made under Section 14, shall be added to, and become part of the principal of the Indebtedness, shall be immediately due and payable and shall bear interest from the date of disbursement until paid at the rate specified by HUD.

(c) Nothing in Section 14 shall require Lender to incur any expense or take any action, and Lender shall not incur any expense or take any action without the prior written approval of HUD.

15. INSPECTION. Lender and/or HUD, their agents, representatives, and designees, may make or cause to be made entries upon and inspections of the Mortgaged Property (including the HUD-required annual inspection and any environmental inspections and tests) during normal business hours, or at any other reasonable time.

16. BOOKS AND RECORDS; FINANCIAL REPORTING.

(a) Borrower shall keep and maintain at all times at the Mortgaged Property or the management agent's offices, and upon Lender's or HUD's request shall make

available at the Mortgaged Property, complete and accurate books of account and records (including copies of supporting bills and invoices) adequate to reflect correctly the operation of the Mortgaged Property, and copies of all written contracts, Leases, and other instruments which affect the Mortgaged Property. The books, records, contracts, Leases and other instruments shall be subject to examination and inspection at any reasonable time by Lender and/or HUD.

(b) Borrower shall furnish to Lender all of the following:

- (1) within 90 days after the end of each fiscal year of Borrower (or pursuant to HUD requirements, if different), a statement of income and expenses for Borrower's operation of the Mortgaged Property for that fiscal year, a statement of changes in financial position of Borrower relating to the Mortgaged Property for that fiscal year and, when requested by Lender or HUD, a balance sheet showing all assets and liabilities of Borrower relating to the Mortgaged Property as of the end of that fiscal year;
- (2) within 120 days after the end of each fiscal year of Borrower (or pursuant to HUD requirements, if different), and at any other time upon Lender's or HUD's request, a rent schedule for the Mortgaged Property showing the name of each tenant, and for each tenant, the space occupied, the lease expiration date, the rent payable for the current month, the date through which rent has been paid, and any related information requested by Lender;
- (3) within 120 days after the end of each fiscal year of Borrower (or pursuant to HUD requirements, if different), and at any other time upon Lender's or HUD's request, an accounting of all security deposits held pursuant to all Leases, including the name of the institution (if any) and the names and identification numbers of the accounts (if any) in which such security deposits are held and the name of the person to contact at such financial institution, along with any authority or release necessary for Lender to access information regarding such accounts;
- (4) within 120 days after the end of each fiscal year of Borrower (or pursuant to HUD requirements, if different), and at any other time upon Lender's or HUD's request, a statement that identifies all owners with any interest in Borrower, directly or indirectly, or through one or more intermediaries, and the interest held by each. In addition, the Borrower must also submit a list of all officers and directors of any corporations, and all managers who are not members of any limited liability company, identified in this statement;

- (5) upon Lender's or HUD's request at any time when an Event of Default has occurred and is continuing, monthly income and expense statements for the Mortgaged Property;
- (6) upon Lender's or HUD's request, a monthly property management report for the Mortgaged Property, showing the number of inquiries made and rental applications received from tenants or prospective tenants and deposits received from tenants and any other information requested by Lender; and
- (7) any other records or documents reasonably requested by Lender or HUD.

(c) Each of the statements, schedules and reports required by Section 16(b) shall be certified to be complete and accurate by an individual having authority to bind Borrower, and shall be in such form and contain such detail as Lender and/or HUD may require. Lender or HUD also may require that any statements, schedules or reports be audited at Borrower's expense by independent certified public accountants acceptable to Lender or HUD.

(d) If Borrower fails to provide in a timely manner the statements, schedules and reports required by Section 16(b), Lender or HUD shall have the right to have Borrower's books and records audited, at Borrower's expense, by independent certified public accountants selected by Lender in order to obtain such statements, schedules and reports, and all related costs and expenses of Lender shall become immediately due and payable and shall become an additional part of the Indebtedness as provided in Section 14.

(e) If an Event of Default has occurred and is continuing, Borrower shall, at Borrower's expense, deliver to Lender or HUD upon written demand all books and records relating to the Mortgaged Property or its operation.

(f) Borrower authorizes Lender or HUD to obtain a credit report on Borrower at any time.

17. TAXES; OPERATING EXPENSES.

(a) Subject to the provisions of Section 17(c) and Section 17(d), Borrower shall pay, or cause to be paid, all Taxes when due and before the addition of any interest, fine, penalty or cost for nonpayment.

(b) Subject to the provisions of Section 17(c) and the HUD-approved operating budget, if any, Borrower shall pay the expenses of operating, managing, maintaining and repairing the Mortgaged Property (including insurance premiums, utilities, repairs and replacements) before the last date upon which each such payment may be made without any penalty or interest charge being added.

(c) As long as no Event of Default exists and Borrower has timely delivered to Lender any bills or premium Notice that it has received, Borrower shall not be obligated to pay Taxes, insurance premiums or any other individual Imposition to the extent that sufficient Imposition Deposits are held by Lender for the purpose of paying that specific Imposition. If an Event of Default exists and subject to outstanding HUD requirements pertaining to claims for mortgage insurance benefits, Lender may exercise any rights Lender may have with respect to Imposition Deposits without regard to whether Impositions are then due and payable. Lender shall have no liability to Borrower for failing to pay any Impositions to the extent that any Event of Default has occurred and is continuing, insufficient Imposition Deposits are held by Lender at the time an Imposition becomes due and payable or Borrower has failed to provide Lender with bills and premium Notice as provided above.

(d) Borrower, at its own expense and with the approval of HUD, may contest by appropriate legal proceedings, conducted diligently and in good faith, the amount or validity of any Imposition other than insurance premiums, if (1) Borrower notifies Lender of the commencement or expected commencement of such proceedings, (2) the Mortgaged Property is not in danger of being sold or forfeited, (3) Borrower deposits with Lender reserves sufficient to pay the contested Imposition, if requested by Lender, and (4) Borrower furnishes whatever additional security is required in the proceedings or is reasonably requested by Lender, which may include the delivery to Lender of the reserves established by Borrower to pay the contested Imposition.

(e) Borrower shall promptly deliver to Lender a copy of all Notices of, and invoices for, Impositions, and if Borrower pays any Imposition directly, Borrower shall promptly furnish to Lender receipts evidencing such payments.

18. LIENS; ENCUMBRANCES. Borrower acknowledges that the grant, creation or existence of any mortgage, deed of trust, deed to secure debt, security interest or other lien or encumbrance (a "Lien") on the Mortgaged Property (other than the lien of this Security Instrument, any tax liens which are imposed before payment is due, or any inferior liens which are approved by HUD and Lender), whether voluntary, involuntary or by operation of law, and whether or not such Lien has priority over the lien of this Security Instrument, is an Event of Default and subjects Borrower to personal liability under the Note.

19. PRESERVATION, MANAGEMENT AND MAINTENANCE OF MORTGAGED PROPERTY. Borrower (a) shall not commit Waste or permit impairment or deterioration of the Mortgaged Property, (b) shall not abandon the Mortgaged Property, (c) shall restore or repair promptly, in a good and workmanlike manner, any damaged part of the Mortgaged Property to the equivalent of its original condition, or such other condition as Lender may approve in writing, whether or not litigation or insurance proceeds or condemnation awards are available to cover any costs of such restoration or repair, (d) shall keep the Mortgaged Property in decent, safe, sanitary condition and good repair, including the replacement of Personalty and Fixtures with items of equal or better function and quality, all in accordance with applicable HUD

requirements, (e) shall provide for qualified management of the Mortgaged Property by a residential rental property manager satisfactory to Lender and HUD under a contract approved by Lender in writing or for the operation of a Health Care Facility pursuant to any governmental requirements pertaining to operation and licensure, (f) shall give Notice to Lender and HUD of and, unless otherwise directed in writing by Lender and HUD, shall appear in and defend, any action or proceeding purporting to affect the Mortgaged Property, Lender's security or Lender's rights under this Security Instrument, (g) shall not (and shall not permit any tenant or other person to) remove, demolish or alter the Mortgaged Property or any part of the Mortgaged Property without the prior written approval of HUD except that the Borrower may, without the prior written approval of HUD, dispose of obsolete or deteriorated Fixtures or Personalty if the same are replaced with like items of the same or greater quality or value, and (h) shall not expend any project funds in connection with expenses incurred by or for the benefit of the ownership entity. All expenses incurred by Borrower in connection with the Mortgaged Property shall be reasonable and necessary, and incurred in compliance with HUD requirements.

20. MANAGEMENT CONTRACTS. Any management contract entered into by Borrower shall contain a provision that it shall be subject to termination without penalty and without cause upon written request of Lender and shall contain a provision which gives no more than a thirty day notice of termination. Upon such request, Borrower shall immediately arrange to terminate the contract, and the Borrower shall also make arrangements satisfactory to Lender for continuing acceptable management of the Mortgaged Property effective as of the termination date of the contract.

21. PROPERTY AND LIABILITY INSURANCE.

(a) Borrower shall keep the Improvements insured at all times against such hazards as Lender and HUD may from time to time require, which insurance shall include but not be limited to coverage against loss by fire and allied perils, general boiler and machinery coverage, builders all-risk and business income coverage. Lender's and HUD's insurance requirements may change from time to time throughout the term of the Indebtedness. If Lender or HUD so require, such insurance shall also include sinkhole insurance, mine subsidence insurance, earthquake insurance, and, if the Mortgaged Property does not conform to applicable zoning or land use laws, building ordinance or law coverage. If any of the Improvements is located in an area identified by the Federal Emergency Management Agency (or any successor to that agency) as an area having special flood hazards, and if flood insurance is available in that area, Borrower shall insure such Improvements against loss by flood. If Lender determines that flood insurance has not been obtained in the required amount, Lender must notify Borrower and HUD of Borrower's obligations to obtain the proper flood insurance. If Borrower does not obtain such insurance within 45 days of the date of this notification, Lender shall purchase such flood insurance on behalf of Borrower and may charge Borrower for the cost of premiums and fees incurred by Lender in purchasing the flood insurance.

(b) All premiums on insurance policies required under Section 21(a) shall be paid in the manner provided in Section 7, unless Lender has designated in writing another method of payment. All such policies shall also be in a form approved by Lender. All policies of property damage insurance shall include a non-contributing, non-reporting mortgage clause in a form approved by Lender, and in favor of Lender and HUD, as their interests may appear. Lender shall have the right to hold the original policies or duplicate original policies of all insurance required by Section 21(a). Borrower shall promptly deliver to Lender a copy of all renewal and other Notices received by Borrower with respect to the policies and all receipts for paid premiums. At least 30 days prior to the expiration date of a policy, Borrower shall deliver to Lender the original (or a duplicate original) of a renewal policy in form satisfactory to Lender.

(c) Borrower shall maintain at all times commercial general liability insurance, workers' compensation insurance and such other liability, errors and omissions and fidelity insurance coverages as Lender and HUD may from time to time require, or shall require any appropriate party, including but not limited to the Operator or Lessee to maintain at all times commercial general liability insurance, workers' compensation insurance and such other liability, errors and omissions and fidelity insurance coverages as Lender and HUD may from time to time require.

(d) All insurance policies and renewals of insurance policies required by Section 21 shall be in such amounts and for such periods as Lender and HUD may from time to time require, and shall be issued by insurance companies satisfactory to Lender. Lender shall have the right to effect insurance in the event Borrower fails to comply with this Section.

(e) Borrower shall comply with all insurance requirements and shall not permit any condition to exist on the Mortgaged Property that would invalidate any part of any insurance coverage that this Security Instrument requires Borrower to maintain.

(f) In the event of loss, Borrower shall give immediate written Notice to the insurance carrier and to Lender. Borrower hereby authorizes and appoints Lender as attorney-in-fact for Borrower to make proof of loss, to adjust and compromise any claims under policies of property damage insurance, to appear in and prosecute any action arising from such property damage insurance policies, to collect and receive the proceeds of property damage insurance, and to deduct from such proceeds Lender's expenses incurred in the collection of such proceeds. This power of attorney is coupled with an interest and therefore is irrevocable. However, nothing contained in Section 21 shall require Lender to incur any expense or take any action. Lender may, at Lender's option and with the prior written approval of HUD, (1) hold the balance of such proceeds to be used to reimburse Borrower for the cost of restoring and repairing the Mortgaged Property to the equivalent of its original condition or to a condition approved by Lender (the "Restoration"), or (2) apply the balance of such proceeds to the payment of the Indebtedness, whether or not then due. To the extent Lender determines to apply insurance proceeds to Restoration, Lender shall do so in accordance with Lender's then-

current policies relating to the restoration of casualty damage on similar multifamily properties and in accordance with outstanding HUD policy and regulations.

(g) Lender shall not exercise its option to apply insurance proceeds to the payment of the Indebtedness if all of the following conditions are met: (1) no Event of Default (or any event which, with the giving of Notice or the passage of time, or both, would constitute an Event of Default) has occurred and is continuing; (2) Lender determines, in its discretion, that there will be sufficient funds to complete the Restoration; (3) Lender determines, in its discretion, that the rental income from the Mortgaged Property after completion of the Restoration will be sufficient to meet all operating costs and other expenses, Imposition Deposits, deposits to reserves and loan repayment obligations relating to the Mortgaged Property; and (4) Lender determines, in its discretion, that the Restoration will be completed before the earlier of (A) one year before the maturity date of the Note or (B) one year after the date of the loss or casualty. Further, Lender may not exercise its option to apply insurance proceeds to the payment of the Indebtedness without the prior written approval of HUD. If HUD fails to give its approval to the use or application of such funds within 60 days after the written request by the Lender, the Lender may use or apply such funds for any of the purposes specified herein without the approval of HUD.

(h) If the Mortgaged Property is sold at a foreclosure sale or Lender or HUD acquire title to the Mortgaged Property, Lender and HUD, as their interests may appear, shall automatically succeed to all rights of Borrower in and to any insurance policies and unearned insurance premiums and in and to the proceeds of property damage insurance resulting from any damage to the Mortgaged Property prior to such sale or acquisition.

22. CONDEMNATION.

(a) Borrower shall promptly notify Lender and HUD of any action or proceeding relating to any condemnation or other taking, or conveyance in lieu thereof, of all or any part of the Mortgaged Property, whether direct or indirect (a "Condemnation"). Borrower shall appear in and prosecute or defend any action or proceeding relating to any Condemnation unless otherwise directed by Lender in writing. Borrower authorizes and appoints Lender as attorney-in-fact for Borrower to commence, appear in and prosecute, in Lender's or Borrower's name, any action or proceeding relating to any Condemnation and to settle or compromise any claim in connection with any Condemnation. This power of attorney is coupled with an interest and therefore is irrevocable. However, nothing contained in Section 22 shall require Lender to incur any expense or take any action. Borrower hereby transfers and assigns to Lender all right, title and interest of Borrower in and to any award or payment with respect to (1) any Condemnation, or any conveyance in lieu of Condemnation, and (2) any damage to the Mortgaged Property caused by governmental action that does not result in a Condemnation.

(b) All awards of compensation in connection with condemnation for public use of or a taking of any of the Mortgaged Property, shall be paid to Lender to be applied to the amount due under the Note secured hereby in (1) amounts equal to the next maturing installment or installments of principal and (2) with any balance to be credited to the next payment due under the Note. All awards of damages in connection with any condemnation for public use of or damage to the Mortgaged Property, shall be paid to Lender to be applied to a fund held for and on behalf of Borrower which fund shall, at the option of Lender, and with the prior written approval of HUD, either be applied to the amount due under the Note as specified in the preceding sentence, or be disbursed for the restoration or repair of the Mortgaged Property. No amount applied to the reduction of the principal amount due in accordance with Section 22(b)(1) shall be considered an optional prepayment as the term is used in this Security Instrument and the Note secured hereby, nor relieve Borrower from making regular monthly payments commencing in the first day of the first month following the date of receipt of the award. Lender is hereby authorized in the name of Borrower to execute and deliver necessary releases or approvals or to appeal from such awards.

23. TRANSFERS OF THE MORTGAGED PROPERTY OR INTERESTS IN BORROWER. The Borrower shall not convey, assign, transfer, pledge, hypothecate, encumber or otherwise dispose of the Mortgaged Property or any interest therein or permit the conveyance, assignment or transfer of any interest in the Borrower (if the effect of such conveyance, assignment or transfer is the creation or elimination of a Principal) without the prior written approval of HUD. The Borrower does not need to obtain the prior written approval of HUD for: (a) a conveyance of the Mortgaged Property at a judicial or non-judicial foreclosure sale under this Security Instrument, (b) the Mortgaged Property becoming part of a bankruptcy estate by operation of law under the United States Bankruptcy Code, or (c) an interest acquired by inheritance or by Court decree.

24. EVENTS OF DEFAULT. The occurrence of any one or more of the following shall constitute either a Class A Event of Default or a Class B Event of Default under this Security Instrument:

(a) Class A Event of Default: Any failure by Borrower to pay or deposit when due any amount required by the Note or Section 7(a) or (b) of this Security Instrument for a period of thirty (30) days after the due date thereof.

(b) Class B Events of Default:

(1) fraud or material misrepresentation or material omission by Borrower, any of its officers, directors, trustees, general partners, members or managers or any guarantor in connection with (i) the application for or creation of the Indebtedness, (ii) any financial statement, rent roll, or other report or information provided to Lender during the term of the Indebtedness, or (iii) any request for

Lender's consent to any proposed action under this Security Instrument or the Note;

- (2) the commencement of a forfeiture action or proceeding, whether civil or criminal, which, in Lender's reasonable judgment, could result in a forfeiture of the Mortgaged Property or otherwise materially impair the lien created by this Security Instrument or Lender's interest in the Mortgaged Property;
- (3) any failure by Borrower to perform any of its obligations under this Security Instrument (other than those specified in Section 24(a) and Section 24(b)(1) and (b)(2)), as and when required, which continues for a period of 30 days after Notice of such failure by Lender to Borrower. However, no such Notice or grace period shall apply in the case of any such failure which could, in Lender's judgment, absent immediate exercise by Lender of a right or remedy under this Security Instrument, result in harm to Lender or impairment of the Note or this Security Instrument;
- (4) any failure by Borrower to perform any of its obligations as and when required under the Regulatory Agreement which continue beyond the applicable cure period, if any, specified in the Regulatory Agreement; however, violations under the terms of the Regulatory Agreement may only be treated as a default hereunder in cases where HUD requires Lender to do so; and
- (5) Borrower voluntarily files for bankruptcy protection under the United States Bankruptcy Code or voluntarily becomes subject to any reorganization, receivership, insolvency proceeding or other similar proceeding pursuant to any other federal or state law affecting debtor and creditor rights, or an involuntary case is commenced against Borrower by any creditor (other than Lender) of Borrower pursuant to the United States Bankruptcy Code or other federal or state law affecting debtor and creditor rights and is not dismissed or discharged within 60 days after filing.

25. REMEDIES CUMULATIVE. Each right and remedy provided in this Security Instrument is distinct from all other rights or remedies under this Security Instrument, the Note or the Regulatory Agreement or afforded by applicable law, and each shall be cumulative and may be exercised concurrently, independently, or successively, in any order.

26. FORBEARANCE.

(a) So long as the obligation secured hereby is insured by HUD, Lender shall not without obtaining the prior written consent of HUD, take any of the following actions:

extend the time for payment of all or any part of the Indebtedness; reduce the payments due under this Security Instrument or the Note; release anyone liable for the payment of any amounts under this Security Instrument or the Note; accept a renewal of the Note; modify the terms and time of payment of the Indebtedness; join in any extension or subordination agreement; release any Mortgaged Property; take or release other or additional security; modify the rate of interest or period of amortization of the Note or change the amount of the monthly installments payable under the Note; and otherwise modify this Security Instrument, the Note, or the Regulatory Agreement. However, if the Contract of Insurance has been terminated, Lender may (but shall not be obligated to) agree with Borrower to any of the aforementioned actions in this Section and Lender shall not have to give Notice to or obtain the consent of any guarantor or third-party obligor.

(b) Any forbearance by Lender (or HUD as its interests appear) in exercising any right or remedy under the Note, this Security Instrument, or the Regulatory Agreement or otherwise afforded by applicable law, shall not be a waiver of or preclude the exercise of any right or remedy. The acceptance by Lender of payment of all or any part of the Indebtedness after the due date of such payment, or in an amount which is less than the required payment, shall not be a waiver of Lender's right to require prompt payment when due of all other payments on account of the Indebtedness or to exercise any remedies for any failure to make prompt payment. Enforcement by Lender of any security for the Indebtedness shall not constitute an election by Lender of remedies so as to preclude the exercise of any other right available to Lender. Lender's receipt of any awards or proceeds under Section 21 and Section 22 shall not operate to cure or waive any Event of Default.

27. LOAN CHARGES. If any applicable law limiting the amount of interest or other charges permitted to be collected from Borrower is interpreted so that any charge provided for in this Security Instrument or the Note, whether considered separately or together with other charges levied in connection with this Security Instrument or the Note, violates that law, and Borrower is entitled to the benefit of that law, that charge is hereby reduced to the extent necessary to eliminate that violation. The amounts, if any, previously paid to Lender in excess of the permitted amounts shall be applied by Lender to reduce the principal of the Indebtedness. For the purpose of determining whether any applicable law limiting the amount of interest or other charges permitted to be collected from Borrower has been violated, all Indebtedness which constitutes interest, as well as all other charges levied in connection with the Indebtedness which constitute interest, shall be deemed to be allocated and spread over the stated term of the Note. Unless otherwise required by applicable law, such allocation and spreading shall be effected in such a manner that the rate of interest so computed is uniform throughout the stated term of the Note.

28. WAIVER OF STATUTE OF LIMITATIONS. To the extent permitted by law, Borrower hereby waives the right to assert any statute of limitations as a bar to the enforcement of the lien of this Security Instrument or to any action brought to enforce this Security Instrument or the Note.

29. WAIVER OF MARSHALLING. Notwithstanding the existence of any other security interests in the Mortgaged Property held by Lender or by any other party and subject to the rights and requirements of HUD particularly under but not limited to the Regulatory Agreement, Lender shall have the right to determine the order in which any or all of the Mortgaged Property shall be subjected to the remedies provided in this Security Instrument and the Note or applicable law. Lender shall have the right to determine the order in which any or all portions of the Indebtedness are satisfied from the proceeds realized upon the exercise of such remedies. Borrower and any party who now or in the future acquires a security interest in the Mortgaged Property and who has actual or constructive notice of this Security Instrument waives any and all right to require the marshalling of assets or to require that any of the Mortgaged Property be sold in the inverse order of alienation or that any of the Mortgaged Property be sold in parcels or as an entirety in connection with the exercise of any of the remedies permitted by applicable law or provided in this Security Instrument.

30. FURTHER ASSURANCES. Borrower shall execute, acknowledge, and deliver, at its sole cost and expense, all further acts, deeds, conveyances, assignments, estoppel certificates, financing statements, transfers and assurances as Lender may require from time to time in order to better assure, grant, and convey to Lender the rights intended to be granted, now or in the future, to Lender under this Security Instrument and the Note.

31. ESTOPPEL CERTIFICATE. Within 10 days after a request from Lender, Borrower shall deliver to Lender a written statement, signed and acknowledged by Borrower, certifying to Lender or any person designated by Lender, as of the date of such statement, (a) that the Note, the Regulatory Agreement and this Security Instrument are unmodified and in full force and effect (or, if there have been modifications, that the Note, the Regulatory Agreement and this Security Instrument are in full force and effect as modified and setting forth such modifications); (b) the unpaid principal balance of the Note; (c) the date to which interest under the Note has been paid; (d) that Borrower is not in default in paying the Indebtedness or in performing or observing any of the covenants or agreements contained in this Security Instrument, the Note and the Regulatory Agreement (or, if Borrower is in default, describing such default in reasonable detail); (e) whether or not there are then existing any setoffs or defenses known to Borrower against the enforcement of any right or remedy of Lender under the Note, the Regulatory Agreement and this Security Instrument; and (f) any additional facts requested by Lender.

32. GOVERNING LAW; CONSENT TO JURISDICTION AND VENUE.

(a) This Security Instrument and the Note which does not itself expressly identify the law that is to apply to it, shall be governed by the laws of the jurisdiction in which the Land is located (the "**Property Jurisdiction**") except as such local law may be preempted by federal law.

(b) Borrower agrees that any controversy arising under or in relation to the Note or this Security Instrument shall be litigated exclusively in the Property Jurisdiction except as federal jurisdiction may be appropriate pursuant to any federal requirements. The state and federal courts and authorities with jurisdiction in the Property Jurisdiction shall have exclusive jurisdiction over all controversies which shall arise under or in relation to the Note, any security for the Indebtedness, or this Security Instrument. Borrower irrevocably consents to service, jurisdiction, and venue of such courts for any such litigation and waives any other venue to which it might be entitled by virtue of domicile, habitual residence or otherwise.

33. NOTICE.

(a) All notices, demands and other communications ("**Notice**") under or concerning this Security Instrument shall be in writing. Each Notice shall be addressed to the intended recipient at its address set forth in this Security Instrument (and notices to HUD shall be addressed to the appropriate HUD field office responsible for servicing the Mortgaged Property), and shall be deemed given on the earliest to occur of (1) the date when the Notice is received by the addressee; (2) the first Business Day after the Notice is delivered to a recognized overnight courier service, with arrangements made for payment of charges for next Business Day delivery; or (3) the third Business Day after the Notice is deposited in the United States mail with postage prepaid, certified mail, return receipt requested. As used in this Section 33, the term "Business Day" means any day other than a Saturday, a Sunday or any other day on which Lender or HUD is not open for business.

(b) Any party to this Security Instrument may change the address to which Notices intended for it are to be directed by means of Notice given to the other party in accordance with Section 33. Each party agrees that it will not refuse or reject delivery of any Notice given in accordance with Section 33, that it will acknowledge, in writing, the receipt of any Notice upon request by the other party and that any Notice rejected or refused by it shall be deemed for purposes of Section 33 to have been received by the rejecting party on the date so refused or rejected, as conclusively established by the records of the U.S. Postal Service or the courier service.

(c) Any Notice under the Note which does not specify how Notice is to be given shall be given in accordance with Section 33.

34. SALE OF NOTE; CHANGE IN SERVICER. The Note or a partial interest in the Note (together with this Security Instrument) may be sold one or more times without prior Notice to Borrower. A sale may result in a change of the Loan Servicer. There also may be one or more changes of the Loan Servicer unrelated to a sale of the Note. If there is a sale or transfer of all or a partial interest in the Note or a change of the Loan Servicer, Borrower will be given Notice of the sale, transfer and/or change.

35. SINGLE ASSET BORROWER. Until the Indebtedness is paid in full or unless otherwise approved in writing by HUD, (a) Borrower is either a single asset entity

or a natural person and shall maintain the assets of the Mortgaged Property in segregated accounts and (b) Borrower, if not a natural person, (1) shall not acquire any real or personal property other than the Mortgaged Property and personal property related to the operation and maintenance of the Mortgaged Property except pursuant to the rules and regulations of HUD and with the prior written approval of HUD and (2) shall not own or operate any business other than the management and operation of the Mortgaged Property except pursuant to the rules and regulations of HUD and with the prior written approval of HUD.

36. SUCCESSORS AND ASSIGNS BOUND. This Security Instrument shall bind, and the rights granted by this Security Instrument shall inure to, the respective successors and assigns of Lender and Borrower.

37. JOINT AND SEVERAL LIABILITY. If more than one person or entity signs this Security Instrument as Borrower, the obligations of such persons and entities shall be joint and several.

38. RELATIONSHIP OF PARTIES; NO THIRD PARTY BENEFICIARY.

(a) The relationship between Lender and Borrower shall be solely that of creditor and debtor, respectively, and nothing contained in this Security Instrument shall create any other relationship between Lender and Borrower.

(b) No creditor of any party to this Security Instrument and no other person shall be a third party beneficiary of this Security Instrument, the Note or the Regulatory Agreement. Without limiting the generality of the preceding sentence, (1) any arrangement (a "**Servicing Arrangement**") between the Lender and any Loan Servicer for loss sharing or interim advancement of funds shall constitute a contractual obligation of such Loan Servicer that is independent of the obligation of Borrower for the payment of the Indebtedness, (2) Borrower shall not be a third party beneficiary of any Servicing Arrangement, and (3) no payment by the Loan Servicer under any Servicing Arrangement will reduce the amount of the Indebtedness.

39. SEVERABILITY; AMENDMENTS. The invalidity or unenforceability of any provision of this Security Instrument shall not affect the validity or enforceability of any other provision, and all other provisions shall remain in full force and effect. This Security Instrument contains the entire agreement among the parties as to the rights granted and the obligations assumed in this Security Instrument. This Security Instrument may not be amended or modified except by a writing signed by the party against whom enforcement is sought.

40. CONSTRUCTION. The captions and headings of the sections of this Security Instrument are for convenience only and shall be disregarded in construing this Security Instrument. Any reference in this Security Instrument to an "**Exhibit**" or a "**Section**" shall, unless otherwise explicitly provided, be construed as referring, respectively, to an Exhibit attached to this Security Instrument or to a Section of this

Security Instrument. All Exhibits attached to or referred to in this Security Instrument are incorporated by reference into this Security Instrument. Any reference in this Security Instrument to a statute or regulation shall be construed as referring to that statute or regulation as amended from time to time except as to certain HUD regulations and procedures in connection with the Contract of Insurance which initially establish the rights of the Lender and the Borrower. Use of the singular in this Agreement includes the plural and use of the plural includes the singular. As used in this Security Instrument, the term "including" means "including, but not limited to."

41. LOAN SERVICING. All actions regarding the servicing of the Note, including the collection of payments, the giving and receipt of Notice, inspections of the Mortgaged Property, inspections of books and records, and the granting of consents and approvals, may be taken by the Loan Servicer unless Borrower receives Notice to the contrary. If Borrower receives conflicting Notice regarding the identity of the Loan Servicer or any other subject, any such Notice from Lender shall govern unless there is a Notice from HUD and, in all cases, any Notice from HUD governs notwithstanding any Notice from any other party.

42. DISCLOSURE OF INFORMATION. To the extent permitted by law, Lender may furnish information regarding Borrower or the Mortgaged Property to third parties with an existing or prospective interest in the servicing, enforcement, evaluation, performance, purchase or securitization of the Indebtedness, including but not limited to trustees, master servicers, special servicers, rating agencies, and organizations maintaining databases on the underwriting and performance of multifamily mortgage loans. Borrower irrevocably waives any and all rights it may have under applicable law to prohibit such disclosure, including but not limited to any right of privacy.

43. NO CHANGE IN FACTS OR CIRCUMSTANCES. Borrower certifies that all information in the application for the loan submitted to Lender (the "Loan Application") and in all financial statements, rent rolls, reports, certificates and other documents submitted in connection with the Loan Application are complete and accurate in all material respects and that there has been no material adverse change in any fact or circumstance that would make any such information incomplete or inaccurate. The submission of false or incomplete information shall be a Class B Event of Default.

44. ESTOPPEL. The Lender is not the agent of HUD. Any action by the Lender in exercising any right or remedy under this Security Instrument shall not be a waiver or preclude the exercise by HUD of any right or remedy which HUD might have under the Regulatory Agreement or other HUD requirements.

45. ACCELERATION; REMEDIES. At any time during the existence of a Class A Event of Default, Lender, at Lender's option, may declare the Indebtedness to be immediately due and payable without further demand, and may invoke the power of sale and any other remedies permitted by applicable law or provided in this Security Instrument or in the Note. At any time during the existence of a Class B Event of Default, Lender, at Lender's option, but only after receipt of the prior written approval of

HUD, may declare the Indebtedness to be immediately due and payable without further demand, and may invoke the power of sale and any other remedies permitted by applicable law or provided in this Security Instrument or in the Note. Notwithstanding any language in Section 45 to the contrary, upon direction of HUD, following a declaration of default by HUD under the Regulatory Agreement, Lender shall declare the entire Indebtedness to be due and payable. Borrower acknowledges that the power of sale granted in this Security Instrument may be exercised by Lender without prior judicial hearing. Borrower has the right to bring an action to assert the non-existence of a Class A or Class B Event of Default or any other defense of Borrower to acceleration and sale; however, applicable Federal law may limit certain rights of the Borrower. Lender shall be entitled to collect all costs and expenses incurred in pursuing such remedies, including reasonable attorneys' fees (including but not limited to appellate litigation), costs of documentary evidence, abstracts and title reports.

[INSERT PROVISIONS PERTAINING TO SALE AS APPROPRIATE UNDER STATE LAW]

46. FEDERAL REMEDIES. In addition to any rights and remedies set forth in the Regulatory Agreement, HUD has rights and remedies under federal law, including but not limited to the right to foreclose pursuant to the Multifamily Mortgage Foreclosure Act of 1981, 12 U.S.C. 3701 *et seq.* when HUD is the holder of the Note.

47. REMEDIES FOR WASTE. In addition to any other rights and remedies set forth in the Note and this Security Instrument or those available under applicable law, including exemplary damages where permitted, the following remedies for Waste by Borrower are available to Lender as necessary to give complete redress:

- (a) the exercise of the remedies available to Lender during the existence of a Class B default, as set forth in Section 45 of this Security Instrument;
- (b) an injunction prohibiting future Waste or requiring correction of Waste already committed, but only to the extent that the Waste has impaired or threatens to impair Lender's security; and
- (c) recovery of damages, limited by the amount of the Waste, to the extent that the Waste has impaired Lender's security. Any recovery of damages by Lender or HUD for Waste shall be applied, at the sole discretion of HUD, (1) to remedy the Waste of the Mortgaged Property, (2) to the Indebtedness or (3) for any other purpose designated by HUD.

If the mortgage or deed of trust relationship has ended at the time Lender claims Waste has been committed against the Mortgaged Property, an impairment of security exists if the value of the Mortgaged Property is less than the sum of the debt obligation under the Note and this Security Instrument, and the obligations secured by any liens senior to this Security Instrument. If the mortgage or deed of trust relationship continues to exist at the time Lender claims Waste has been committed against the Mortgaged Property, an

impairment of security exists if the ratio of the mortgage or deed of trust obligation to the value of the Mortgaged Property is above its scheduled level.

48. REFERENCES. All references to rental housing income and rental payments shall, in the case of Health Care Facilities be construed to mean all income from whatever source derived from the operation of the facility, so far as the context permits.

49. TERMINATION. At such time as HUD no longer insures this loan or holds this Security Instrument, (a) all rights and responsibilities of HUD shall conclude, all mortgage insurance and references to mortgage insurance premiums shall cease and all obligations of the Secretary and HUD shall terminate; (b) all obligations and responsibilities of Borrower to HUD shall likewise terminate provided Borrower is in compliance with the Regulatory Agreement and (c) all obligations and responsibilities of Lender to HUD shall likewise terminate provided Lender is in compliance with the Contract of Insurance.

50. CONSTRUCTION FINANCING. The Indebtedness represents funds to be used in the construction of certain Improvements on the Land, in accordance with the Building Loan Agreement which is incorporated herein by reference to the same extent and effect as if fully set forth and made herein (provided, however, that if and to the extent that the Building Loan Agreement is inconsistent herewith, this Security Instrument shall govern). If the construction of the Improvements to be made pursuant to the Building Loan Agreement shall not be carried on with reasonable diligence, or shall be discontinued at any time for any reason other than strikes or lock-outs, the Lender, after due Notice to the Borrower, or any subsequent owner, is hereby vested with full and complete authority to enter upon the Land to employ watchmen to protect such Improvements from depredation or injury and to preserve and protect the Personalty therein, to continue any and all outstanding contracts for the erection and completion of said Improvements, to make and enter into any contracts and obligations wherever necessary, either in its own name or in the name of the Borrower, or other owner, and to pay and discharge all debts, obligations, and liabilities incurred thereby. All such sums so advanced by the Lender (exclusive of advances of the principal of the Indebtedness) shall be added to the principal of the Indebtedness secured hereby and all shall be secured by this Security Instrument and shall be due and payable on demand with interest at the rate provided in the Note, but no such advances shall be insured unless same are specifically approved by HUD prior to the making thereof. The Indebtedness shall, at the option of the Lender or holder of this Security Instrument and the Note become due and payable on the failure of the Borrower, or other owner, to keep and perform any of the covenants, conditions and agreements of the Building Loan Agreement. This covenant shall be terminated upon the completion of the Improvements to the satisfaction of the Lender and the making of the final advance as provided in the Building Loan Agreement.

51. ENVIRONMENTAL HAZARDS

(a) Definitions:

- (1) **"Hazardous Materials"** means petroleum and petroleum products and compounds containing them, including gasoline, diesel fuel and oil; explosives; flammable materials; radioactive materials; polychlorinated biphenyls ("PCBs") and compounds containing them; lead and lead-based paint; asbestos or asbestos-containing materials in any form that is or could become friable; underground or above-ground storage tanks, whether empty or containing any substance; any substance the presence of which on the Mortgaged Property is prohibited by any federal, state or local authority; any substance that requires special handling; and any other material or substance now or in the future defined as a "hazardous substance," "hazardous material," "hazardous waste," "toxic substance," "toxic pollutant," "contaminant," or "pollutant" within the meaning of any Hazardous Materials Law.
- (2) **"Hazardous Materials Laws"** means all federal, state, and local laws, ordinances and regulations and standards, rules, policies and other governmental requirements, administrative rulings and court judgments and decrees in effect now or in the future and including all amendments, that relate to Hazardous Materials and apply to Borrower or to the Mortgaged Property. Hazardous Materials Laws include, but are not limited to, the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. Section 9601, *et seq.*, the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901, *et seq.*, the Toxic Substance Control Act, 15 U.S.C. Section 2601, *et seq.*, the Clean Water Act, 33 U.S.C. Section 1251, *et seq.*, and the Hazardous Materials Transportation Act, 49 U.S.C. Section 5101, *et seq.*, and their state analogs.
- (3) **"Environmental Permit"** means any permit, license, or other authorization issued under any Hazardous Materials Law with respect to any activities or businesses conducted on or in relation to the Mortgaged Property.

(b) Except for (1) matters covered by a written program of operations and maintenance approved in writing by Lender (an **"O&M Program"**), (2) matters described in paragraph (c) of this Section 51; or (3) (for so long as the loan secured hereby is insured by HUD) matters covered by outstanding HUD requirements which may differ from this Section 51, with respect to lead based paint requirements, for example, Borrower shall not cause or permit any of the following:

- (i) the presence, use, generation, release, treatment, processing, storage (including storage in above ground and underground

storage tanks), handling, or disposal of any Hazardous Materials on or under the Mortgaged Property or any other property of Borrower that is adjacent to the Mortgaged Property;

- (ii) the transportation of any Hazardous Materials to, from, or across the Mortgaged Property;
- (iii) any occurrence or condition on the Mortgaged Property or any other property of Borrower that is adjacent to the Mortgaged Property, which occurrence or condition is or may be in violation of Hazardous Materials Laws; or
- (iv) any violation of or noncompliance with the terms of any Environmental Permit with respect to the Mortgaged Property or any property of Borrower that is adjacent to the Mortgaged Property.

The matters described in clauses (i) through (iv) above are referred to collectively in this Section 51 as "**Prohibited Activities or Conditions**".

(c) Prohibited Activities and Conditions shall not include the safe and lawful use and storage of quantities of (1) pre-packaged supplies, cleaning materials and petroleum products customarily used in the operation and maintenance of comparable multifamily properties, (2) cleaning materials, personal grooming items and other items sold in pre-packaged containers for consumer use and used by tenants and occupants of residential dwelling units in the Mortgaged Property; and (3) petroleum products used in the operation and maintenance of motor vehicles from time to time located on the Mortgaged Property's parking areas, so long as all of the foregoing are used, stored, handled, transported and disposed of in compliance with Hazardous Materials Laws.

(d) Borrower shall take all commercially reasonable actions (including the inclusion of appropriate provisions in any Leases executed after the date of this Security Instrument) to prevent its employees, agents, and contractors, and all tenants and other occupants from causing or permitting any Prohibited Activities or Conditions. Borrower shall not lease or allow the sublease or use of all or any portion of the Mortgaged Property to any tenant or subtenant for nonresidential use by any user that, in the ordinary course of its business, would cause or permit any Prohibited Activity or Condition.

(e) If an O&M Program has been established with respect to Hazardous Materials, Borrower shall comply in a timely manner with, and cause all employees, agents, and contractors of Borrower and any other persons present on the Mortgaged Property to comply with the O&M Program. All costs of performance of Borrower's obligations under any O&M Program shall be paid by Borrower, and Lender's out-of-pocket costs incurred in connection with the monitoring and review of the O&M Program and Borrower's performance shall be paid by Borrower upon demand by

Lender. Any such out-of-pocket costs of Lender which Borrower fails to pay promptly shall become an additional part of the Indebtedness as provided in Section 14.

(f) Borrower represents and warrants to Lender that, except as previously disclosed by Borrower to Lender in writing:

- (1) Borrower has not at any time engaged in, caused or permitted any Prohibited Activities or Conditions;
- (2) to the best of Borrower's knowledge after reasonable and diligent inquiry, no Prohibited Activities or Conditions exist or have existed;
- (3) except to the extent previously disclosed by Borrower to Lender in writing, the Mortgaged Property does not now contain any underground storage tanks, and, to the best of Borrower's knowledge after reasonable and diligent inquiry, the Mortgaged Property has not contained any underground storage tanks in the past. If there is an underground storage tank located on the Property which has been previously disclosed by Borrower to Lender in writing, that tank complies with all requirements of Hazardous Materials Laws;
- (4) Borrower has complied with all Hazardous Materials Laws, including all requirements for notification regarding releases of Hazardous Materials. Without limiting the generality of the foregoing, Borrower has obtained all Environmental Permits required for the operation of the Mortgaged Property in accordance with Hazardous Materials Laws now in effect and all such Environmental Permits are in full force and effect;
- (5) no event has occurred with respect to the Mortgaged Property that constitutes, or with the passing of time or the giving of Notice would constitute, noncompliance with the terms of any Environmental Permit;
- (6) there are no actions, suits, claims or proceedings pending or, to the best of Borrower's knowledge after reasonable and diligent inquiry, threatened that involve the Mortgaged Property and allege, arise out of, or relate to any Prohibited Activity or Condition; and
- (7) Borrower has not received any complaint, order, Notice of violation or other communication from any Governmental Authority with regard to air emissions, water discharges, noise emissions or Hazardous Materials, or any other environmental, health or safety matters affecting the Mortgaged Property or any other property of Borrower that is adjacent to the Mortgaged Property.

The representations and warranties in this Section 51 shall be continuing representations and warranties that shall be deemed to be made by Borrower throughout the term of the loan evidenced by the Note, until the Indebtedness has been paid in full.

(g) Borrower shall promptly notify Lender in writing upon the occurrence of any of the following events:

- (1) Borrower's discovery of any Prohibited Activity or Condition;
- (2) Borrower's receipt of or knowledge of any complaint, order, Notice of violation or other communication from any Governmental Authority or other person with regard to present or future alleged Prohibited Activities or Conditions or any other environmental, health or safety matters affecting the Mortgaged Property or any other property of Borrower that is adjacent to the Mortgaged Property; and
- (3) any representation or warranty in this Section 51 becomes untrue after the date of this Agreement.

Any such Notice given by Borrower shall not relieve Borrower of, or result in a waiver of, any obligation under this Security Instrument, the Note, or any other Loan Document.

(h) Borrower shall pay promptly the costs of any environmental inspections, tests or audits ("**Environmental Inspections**") required by Lender in connection with any foreclosure or deed in lieu of foreclosure, or as a condition of Lender's consent to any Transfer under Section 23, or required by Lender following a reasonable determination by Lender that Prohibited Activities or Conditions may exist. Any such costs incurred by Lender (including the fees and out-of-pocket costs of attorneys and technical consultants whether incurred in connection with any judicial, appellate or otherwise, or administrative process or otherwise) which Borrower fails to pay promptly shall become an additional part of the Indebtedness as provided in Section 14. The results of all Environmental Inspections made by Lender shall at all times remain the property of Lender and Lender shall have no obligation to disclose or otherwise make available to any party other than Borrower and HUD such results or any other information obtained by Lender in connection with its Environmental Inspections. Lender hereby reserves the right, and Borrower hereby expressly authorizes Lender, to make available to any party, including any prospective bidder at a foreclosure sale of the Mortgaged Property, the results of any Environmental Inspections made by Lender with respect to the Mortgaged Property. Borrower consents to Lender notifying any party (either as part of a notice of sale or otherwise) of the results of any of Lender's Environmental Inspections. Borrower acknowledges that Lender cannot control or otherwise assure the truthfulness or accuracy of the results of any of its Environmental Inspections and that the release of such results to prospective bidders at a foreclosure sale of the Mortgaged Property may

have a material and adverse effect upon the amount which a party may bid at such sale. Borrower agrees that Lender shall have no liability whatsoever as a result of delivering the results of any of its Environmental Inspections to any third party, and Borrower hereby releases and forever discharges Lender from any and all claims, damages, or causes of action, arising out of, connected with or incidental to the results of, the delivery of any of Lender's Environmental Inspections.

(i) If any investigation, site monitoring, containment, clean-up, restoration or other remedial work ("**Remedial Work**") is necessary to comply with any Hazardous Materials Law or order of any Governmental Authority that has or acquires jurisdiction over the Mortgaged Property or the use, operation or improvement of the Mortgaged Property under any Hazardous Materials Law, Borrower shall, by the earlier of (1) the applicable deadline required by Hazardous Materials Law or (2) 30 days after Notice from Lender demanding such action, begin performing the Remedial Work, and thereafter diligently prosecute it to completion, and shall in any event complete the work by the time required by applicable Hazardous Materials Law. If Borrower fails to begin on a timely basis or diligently prosecute any required Remedial Work, Lender may, at its option, cause the Remedial Work to be completed, in which case Borrower shall reimburse Lender on demand for the cost of doing so. Any reimbursement due from Borrower to Lender shall become part of the Indebtedness as provided in Section 14.

(j) Borrower shall cooperate with any inquiry by any Governmental Authority and shall comply with any governmental or judicial order which arises from any alleged Prohibited Activity or Condition.

(k) Borrower shall indemnify, hold harmless and defend (1) Lender, (2) any prior owner or holder of the Note, (3) the Loan Servicer, (4) any prior Loan Servicer, (5) the officers, directors, shareholders, partners, employees and trustees of any of the foregoing, and (vi) the heirs, legal representatives, successors and assigns of each of the foregoing (collectively, the "**Indemnitees**") from and against all proceedings, claims, damages, penalties and costs (whether initiated or sought by Governmental Authorities or private parties), including fees and out of pocket expenses of attorneys and expert witnesses, investigatory fees, and remediation costs, whether incurred in connection with any judicial (including appellate) or administrative process or otherwise, arising directly or indirectly from any of the following:

- (i) any breach of any representation or warranty of Borrower in this Section 51;
- (ii) any failure by Borrower to perform any of its obligations under this Section 51;
- (iii) the existence or alleged existence of any Prohibited Activity or Condition;

(iv) the presence or alleged presence of Hazardous Materials on or under the Mortgaged Property or any property of Borrower that is adjacent to the Mortgaged Property; and

(v) the actual or alleged violation of any Hazardous Materials Law.

(l) Counsel selected by Borrower to defend Indemnitees shall be subject to the approval of those Indemnitees. However, any Indemnatee may elect to defend any claim or legal or administrative proceeding at the Borrower's expense.

(m) Borrower shall not, without the prior written consent of those Indemnitees who are named as parties to a claim or legal or administrative proceeding (a "**Claim**"), settle or compromise the Claim if the settlement (1) results in the entry of any judgment that does not include as an unconditional term the delivery by the claimant or plaintiff to Lender of a written release of those Indemnitees, satisfactory in form and substance to Lender; or (2) may materially and adversely affect Lender, as determined by Lender in its discretion.

(n) Borrower's obligation to indemnify the Indemnitees shall not be limited or impaired by any of the following, or by any failure of Borrower or any guarantor to receive Notice of or consideration for any of the following:

- (1) any amendment or modification of any Loan Document;
- (2) any extensions of time for performance required by any Loan Document;
- (3) any provision in any of the Loan Documents limiting Lender's recourse to property securing the Indebtedness, or limiting the personal liability of Borrower or any other party for payment of all or any part of the Indebtedness;
- (4) the accuracy or inaccuracy of any representations and warranties made by Borrower under this Security Instrument or any other Loan Document;
- (5) the release of Borrower or any other person, by Lender or by operation of law, from performance of any obligation under any Loan Document;
- (6) the release or substitution in whole or in part of any security for the Indebtedness; and
- (7) Lender's failure to properly perfect any lien or security interest given as security for the Indebtedness.

(o) Borrower shall, at its own cost and expense, do all of the following:

- (1) pay or satisfy any judgment or decree that may be entered against any Indemnitee or Indemnities in any legal or administrative proceeding incident to any matters against which Indemnities are entitled to be indemnified under this Section 51;
- (2) reimburse Indemnities for any expenses paid or incurred in connection with any matters against which Indemnities are entitled to be indemnified under this Section 51; and
- (3) reimburse Indemnities for any and all expenses, including fees and out-of-pocket expenses of attorneys and expert witnesses, paid or incurred in connection with the enforcement by Indemnities of their rights under this Section 51, or in monitoring and participating in any legal (including appellate) or administrative proceeding.

(p) In any circumstances in which the indemnity under this Section 51 applies, Lender may employ its own legal counsel and consultants to prosecute, defend or negotiate any claim or legal or administrative proceeding and Lender, with the prior written consent of Borrower (which shall not be unreasonably withheld, delayed or conditioned) may settle or compromise any action or legal or administrative proceeding. Borrower shall reimburse Lender upon demand for all costs and expenses incurred by Lender, including all costs of settlements entered into in good faith, and the fees and out of pocket expenses of such attorneys (including but not limited to appellate litigation) and consultants.

(q) The provisions of this Section 51 shall be in addition to any and all other obligations and liabilities that Borrower may have under applicable law or under other Loan Documents, and each Indemnitee shall be entitled to indemnification under this Section 51 without regard to whether Lender or that Indemnitee has exercised any rights against the Mortgaged Property or any other security, pursued any rights against any guarantor, or pursued any other rights available under the Loan Documents or applicable law. If Borrower consists of more than one person or entity, the obligation of those persons or entities to indemnify the Indemnities under this Section 51 shall be joint and several. The obligation of Borrower to indemnify the Indemnities under this Section 51 shall survive any repayment or discharge of the Indebtedness, any foreclosure proceeding, any foreclosure sale, any delivery of any deed in lieu of foreclosure, and any release of record of the lien of this Security Instrument.

(r) All references to Lender in this Section 51 shall also be construed to refer to HUD as its interests appear (solely as determined by HUD) and all notifications to Lender must also be made to HUD and all Lender approvals and exercises of discretion by Lender under this Section 51 must first have the prior written approval of HUD all so long as the loan secured by this Security Instrument is insured by HUD, provided, that the reference to Lender as an Indemnitee shall be construed to refer to HUD, and

Borrower's obligations to indemnify HUD as an Indemnatee shall remain in effect in accordance with this Section 51, notwithstanding the termination or expiration of insurance of the secured loan by HUD.

(s) To the extent any HUD environmental requirements or standards are inconsistent or conflict with the provisions of this Section 51, the HUD requirements or standards shall control so long as the loan secured by this Security Instrument is insured or held by HUD.

52. [Add state requirements for future advances, credit line or open end mortgages]

ATTACHED EXHIBITS. The following Exhibits are attached to this Security Instrument:

<input checked="" type="checkbox"/>	Exhibit A	Description of the Land (required).
<input type="checkbox"/>	Exhibit B	Modifications to Security Instrument

IN WITNESS WHEREOF, Borrower has signed and delivered this Security Instrument or has caused this Security Instrument to be signed and delivered by its duly authorized representative, as a sealed instrument.

[SIGNATURES AND ACKNOWLEDGMENTS]

EXHIBIT A

[DESCRIPTION OF THE LAND]
A-1

EXHIBIT B**MODIFICATIONS TO SECURITY INSTRUMENT**

The following modifications are made to the text of the Security Instrument that precedes this Exhibit:

B-1